



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2015-0075; FRL-9929-73-Region 5]

**Approval of Air Quality Implementation Plans; Sheboygan County,
Wisconsin 8-Hour Ozone Nonattainment Area; Reasonable Further
Progress Plan**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving an Early Progress Plan and motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) for Sheboygan County, Wisconsin. Wisconsin submitted an Early Progress Plan for Sheboygan County on January 16, 2015. This submittal was developed to establish MVEBs for the Sheboygan 8-hour ozone nonattainment area. This approval of the Early Progress Plan for the Sheboygan 8-hour ozone area is based on EPA's determination that Wisconsin has demonstrated that the State Implementation Plan (SIP) revision containing these MVEBs, when considered with the emissions from all sources, shows some progress toward attainment from the 2011 base year through a 2015 target year.

DATES: This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2015-0075, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: blakley.pamela@epa.gov.
3. Fax: (312) 692-2450.
4. Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of

business are Monday through Friday, 8:30 a.m. to 4:30 p.m.,
excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2015-0075. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael Leslie, Environmental Engineer, at (312) 353-6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, leslie.michael@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever

"we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Is the Background for This Action?

II. What Are the Criteria for Early Progress Plans?

III. What Is EPA's Analysis of the Request?

IV. What Are the MVEBs for the Sheboygan County 8-Hour Ozone Area?

V. What Action Is EPA Taking?

VI. Statutory and Executive Order Reviews.

I. What Is the Background for This Action?

EPA's final rule designating nonattainment areas and associated classifications for the 2008 ozone National Ambient Air Quality Standards (NAAQS) was published in the Federal Register on May 21, 2012 (77 FR 30088). Sheboygan County was designated as marginal nonattainment. The Sheboygan County 8-hour ozone area had been previously designated nonattainment for the 1-hour ozone standard and had 1-hour MVEBs for NO_x and VOC established in the Wisconsin 1-hour maintenance plan SIP. The 1-hour MVEBs are the only approved MVEBs for Sheboygan County and were based on EPA's MOBILE6.2 emissions model.

Consequently, the transportation partners in the Sheboygan area have to use the 1-hour MVEB test to demonstrate transportation conformity for the 8-hour ozone standard until new MVEBs are

approved or found adequate, as required by the transportation conformity rule at 40 CFR 93.109(c)(2)(i). Wisconsin submitted this plan to establish new MVEBs developed with EPA's current MOVES2014 model.

II. What Are the Criteria for Early Progress Plans?

EPA allows for the establishment of MVEBs for the 8-hour ozone standard prior to a state submitting its first required 8-hour ozone SIP that would include new MVEBs. Although voluntary, these "early" MVEBs must be established through a plan that meets all the requirements of a SIP submittal. This plan is known as the "Early Progress Plan." Specifically and in reference to Early Progress Plans, the preamble of the July 1, 2004, final transportation conformity rule (see, 69 FR 40019) reads as follows:

"The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (e.g., rate-of-progress SIP or attainment demonstration) or a maintenance plan. However, 8-hour ozone nonattainment areas are free to establish, through the SIP process, a motor vehicle emissions budget or budgets that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emission budget that does not demonstrate attainment but is consistent with projections and commitments to control

measures and achieves some progress toward attainment' (August 15, 1997, 62 FR 43799). A SIP submitted earlier than otherwise required can demonstrate a significant level of emissions reductions from current level of emissions, instead of a specific percentage required by the Clean Air Act for moderate and above ozone areas."

The Early Progress Plan must demonstrate that the SIP revision containing the MVEBs, when considered with emissions from all sources, and when projected from the base year to a future year, shows some progress toward attainment. EPA has previously indicated that a 5 percent to 10 percent reduction in emissions from all sources could represent a significant level of emissions reductions from current levels (69 FR 40019). This allowance is provided so that areas have an opportunity to use the budget test to demonstrate conformity as opposed to the interim conformity tests (*i.e.*, 2002 baseline test and/or action versus baseline test). The budget test with an adequate or approved SIP budget is generally more protective of air quality and provides a more relevant basis for conformity determinations than the interim emissions test. (69 FR 40026).

It should also be noted that the Early Progress Plan is not a required plan and does not substitute for required submissions such as an attainment demonstration or rate-of-progress plan, if

such plans become required for the Sheboygan 8-hour ozone area.

III. What Is EPA's Analysis of the Request?

On January 16, 2015, the State submitted to EPA an Early Progress Plan for the sole purpose of establishing MVEBs for the Sheboygan 8-hour ozone area. The submittal utilizes a base year of 2011, and a projected year 2015 to establish NO_x and VOC MVEBs. The planning assumptions used to develop the MVEBs were discussed and agreed to by the Sheboygan interagency consultation group, which consists of the transportation and air quality partners in the Sheboygan 8-hour ozone nonattainment area. Tables 1 and 2 below show the differences by source categories between the 2011 base year and 2015 forecast year. The NO_x and VOC emissions in tons per day (tpd) within the Sheboygan nonattainment area are expected to decrease significantly, 28.6 percent and 8.7 percent, respectively, between 2011 and 2015. These emission trends demonstrate that progress will be made towards attainment of the 2008 8-hour ozone NAAQS.

Table 1. Sheboygan County NO_x Emissions

Sheboygan County NO_x Emissions		
Source	2011 NO_x (tpd)	2015 NO_x (tpd)
Point	10.22	6.15
Area	1.32	1.33
On-road Mobile	5.41	4.44
Non-Road Mobile	3.61	2.76
Total	20.56	14.68

Total Percent Reduction	28.6%
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Table 2. Sheboygan County VOC Emissions

Sheboygan County VOC Emissions		
VOC Source	2011 VOC (tpd)	2015 VOC (tpd)
Point	2.63	2.63
Area	6.43	6.34
On-road Mobile	2.44	1.97
Non-Road Mobile	3.03	2.76
Total	14.53	13.27
Total Percent Reduction	8.7%	

EPA found these MVEBs adequate for transportation conformity purposes in an earlier action (80 FR 17428). As of April 16, 2015, the effective date of EPA's adequacy finding for these MVEBs, conformity determinations in Sheboygan County must meet the budget test using these 8-hour MVEBs, instead of the 1-hour ozone MVEBs. Please note that this adequacy finding does not relate to the merits of the SIP submittal, nor does it indicate whether the submittal meets the requirements for approval. This EPA rulemaking action takes formal action on the Early Progress Plan SIP revision.

IV. What Are the MVEBs for the Sheboygan 8-Hour Ozone Area?

Through this rulemaking, EPA is approving the 2015 regional MVEBs for NO_x and VOC for the Sheboygan 8-hour ozone area. EPA has determined that the MVEBs contained in the Early Progress

Plan SIP revision are consistent with emission reductions from all sources within the nonattainment area and are showing progress toward attainment.

The 2015 MVEBs in tpd for VOCs and NO_x for the Sheboygan County, Wisconsin area are as follows:

Area	2015 NO _x (tpd)	2015 VOCs (tpd)
Sheboygan County	4.435	1.972

V. What Action Is EPA Taking?

EPA is approving Sheboygan's Early Progress Plan, including the 2015 MVEBs for NO_x and VOC. The Early Progress Plan demonstrates progress towards attainment of the 2008 ozone NAAQS for the Sheboygan nonattainment area. The NO_x and VOC emissions reductions from 2011 to 2015 for Sheboygan County nonattainment areas were 28.6 percent and 8.7 percent, respectively. These emission reductions were based on control measures that are permanent and enforceable and will continue to improve air quality in the region, thus demonstrating that the MVEBs are showing progress toward attainment.

EPA issues this direct final rulemaking in response to Wisconsin's January 16, 2015 submittal of an Early Progress Plan. This revision is a voluntary SIP revision for the sole purpose of establishing MVEBs for the purpose of implementing transportation conformity in the Sheboygan 8-hour ozone area.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

VI. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by

Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: June 19, 2015.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2585 is amended by adding paragraph (cc) to read as follows:

§ 52.2585 Control strategy: Ozone.

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(cc) Approval — On January 16, 2015, the State of Wisconsin submitted a revision to its State Implementation Plan for Sheboygan County, Wisconsin. The submittal established new Motor Vehicle Emissions Budgets (MVEB) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x) for the year 2015. The MVEBs for Sheboygan County are now: 1.972 tons per day of VOC emissions and 4.435 tons per day of NO_x emissions for the year 2015.

[FR Doc. 2015-16396 Filed: 7/2/2015 08:45 am; Publication Date: 7/6/2015]